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Transcript of Hearing

Date: October 21, 2022

Case: CU 22-10; Windridge Vineyards, LLC

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Transcript of Hearing
October 21, 2022

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<p>1 OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS</p> <p>2 FOR MONTGOMERY COUNTY, MARYLAND</p> <p>3 -----x</p> <p>4 In Re: : Case No.</p> <p>5 Windridge Vineyards, LLC : CU 22-10</p> <p>6 -----x</p> <p>7</p> <p>8 HEARING</p> <p>9 BEFORE HEARING EXAMINER LYNN ROBESON HANNAN</p> <p>10 Conducted virtually</p> <p>11 Friday, October 21, 2022</p> <p>12 9:30 AM EST</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 Job No.: 454317</p> <p>24 Pages: 1 - 58</p> <p>25 Recorded By: Caleb Welsh</p>	<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 LYNN ROBESON HANNAN,</p> <p>4 Hearing Officer</p> <p>5</p> <p>6 ROBERT BUTZ,</p> <p>7 Applicant</p> <p>8</p> <p>9 ROBERT R. HARRIS, ESQUIRE,</p> <p>10 Counsel for the Applicant</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>				
<p>1 Hearing, conducted virtually.</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Pursuant to agreement, before</p> <p>10 Caleb Welsh, Court Reporter.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 C O N T E N T S</p> <table><tr><td data-bbox="878 1129 1094 1182">2 EXAMINATION OF MR. BUTZ</td><td data-bbox="1312 1129 1349 1148">PAGE</td></tr><tr><td data-bbox="922 1161 1049 1182">3 By Mr. Harris</td><td data-bbox="1328 1161 1341 1180">9</td></tr></table> <p>4</p> <p>5</p> <p>6</p> <p>7 E X H I B I T S</p> <p>8 (None marked.)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	2 EXAMINATION OF MR. BUTZ	PAGE	3 By Mr. Harris	9
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<p>5</p> <p>1 PROCEEDINGS</p> <p>2 (Whereupon, the court reporter was duly</p> <p>3 sworn.)</p> <p>4 MS. ROBESON HANNAN: I'm calling the case of CU</p> <p>5 2210 Windridge Winery at 15700 Darnestown Road,</p> <p>6 Germantown, Maryland. Would you identify yourself for the</p> <p>7 record, please?</p> <p>8 MR. HARRIS: Good morning. For the record, this</p> <p>9 is Bob Harris with Lerch, Early, Brewer, the applicant's</p> <p>10 attorney.</p> <p>11 MR. BUTZ: And I'm -- I am Robert Butz, the</p> <p>12 applicant.</p> <p>13 MS. ROBESON HANNAN: Okay, thank you. Now I</p> <p>14 have one question. Is that painting one of your glorious</p> <p>15 sunsets behind you?</p> <p>16 MR. HARRIS: I -- I don't know how to describe</p> <p>17 it, but it does look like that, particularly with the sun</p> <p>18 coming in through the window. I had nothing to do with</p> <p>19 it.</p> <p>20 MS. ROBESON HANNAN: Okay. All right. So are</p> <p>21 there -- I have one preliminary matter. There's been a</p> <p>22 little bit of confusion. I looked at the staff report and</p> <p>23 that does not have that 5,000 square foot tasting room</p> <p>24 reproduced, so I'm not sure that they ever reviewed it.</p> <p>25 And so what -- I did send an e-mail to staff this morning,</p>	<p>7</p> <p>1 testimony.</p> <p>2 MS. ROBESON HANNAN: Okay. Well then I think</p> <p>3 the best thing to do would be to -- for you to proceed.</p> <p>4 You don't have any other -- you don't have any witnesses</p> <p>5 other than Mr. Butz?</p> <p>6 MR. HARRIS: No, ma'am. We did not think it was</p> <p>7 necessary because this is really just putting a new name</p> <p>8 on an existing operation and Mr. Butz owns the land. He</p> <p>9 operates it. He knows more about this facility than any</p> <p>10 other people combined.</p> <p>11 MS. ROBESON HANNAN: Okay. Well, we'll -- let's</p> <p>12 proceed and we'll figure everything out, all right? Did</p> <p>13 you bring pictures of the sunset? I'm teasing.</p> <p>14 MR. HARRIS: Nope.</p> <p>15 MS. ROBESON HANNAN: I've been -- I've been</p> <p>16 visualizing -- is it -- the setting for, as I've been</p> <p>17 looking at the plans. But anyway, why don't you just go</p> <p>18 ahead. Are you going to put Mr. Butz on right now?</p> <p>19 MR. HARRIS: In -- in one second, just, you</p> <p>20 know, as -- as a little further clarification to help, you</p> <p>21 know, get -- get your mind focused on what -- what's</p> <p>22 actually out there, what's approved. So the original</p> <p>23 operating statement that we submitted with the</p> <p>24 application, mentions that, you know, the -- the property</p> <p>25 is going to have the, you know, the -- the existing</p>
<p>6</p> <p>1 you know, forwarding that because I'm required to refer it</p> <p>2 back to staff for any additional review if it differs from</p> <p>3 what they reviewed.</p> <p>4 MR. HARRIS: Okay.</p> <p>5 MS. ROBESON HANNAN: Do you follow what I'm</p> <p>6 saying?</p> <p>7 MR. HARRIS: I do, and I hope that we will be</p> <p>8 able to clear this up with you today, and to the extent</p> <p>9 necessary, with -- with Park and Planning staff. You</p> <p>10 know, and -- and -- and in that regard, again, I</p> <p>11 apologize, I'm the one who unfortunately created some of</p> <p>12 this confusion here. I -- I did not, you know, look</p> <p>13 carefully enough that the various drawings and -- and the</p> <p>14 operations. I thought I knew everything about it because</p> <p>15 I've been to the facility before, but it turned out I did</p> <p>16 not.</p> <p>17 And so -- but again, we will clear that up and</p> <p>18 -- and along that line, I -- you know, and -- and a double</p> <p>19 apology, I don't know how I sent you the wrong exhibit</p> <p>20 yesterday. You were entirely correct that it was just</p> <p>21 another copy of Exhibit 8. So when I got in my office</p> <p>22 early this morning, I did forward what I thought I had</p> <p>23 forwarded before, that is the one that you're referring to</p> <p>24 that shows the 5,000 square foot tasting room. And then</p> <p>25 we'll -- we'll -- we'll get into that through Mr. Butz's</p>	<p>8</p> <p>1 buildings, but then that it would include construction of</p> <p>2 a tasting room approved under the preliminary plan. And</p> <p>3 when -- when you go back to the preliminary plan and --</p> <p>4 and the -- the staff report for it, it talks about a 5,000</p> <p>5 square foot tasting room. And so --</p> <p>6 MS. ROBESON HANNAN: Right. Right.</p> <p>7 MR. HARRIS: Mr. Butz, explained that. So -- so</p> <p>8 what we are proposing and what Exhibit -- the new exhibit</p> <p>9 shows is really within the -- the -- the -- the -- the</p> <p>10 approval for the preliminary plan. No, it does not exist</p> <p>11 today, but the preliminary plan could be implemented today</p> <p>12 without the need for the Country Inn approval. It -- it</p> <p>13 really would just be what -- what kind of activities can</p> <p>14 occur, what kind of beverages can be served within the</p> <p>15 facilities that are already approved. So it -- I'll let</p> <p>16 Mr. Butz explain it further and -- when we get into it.</p> <p>17 But first I -- I'd ask, Mr. Butz, if you would -- I'm -- I</p> <p>18 beg your pardon. Let me ask one thing. I don't remember</p> <p>19 whether witnesses need to be sworn in here or not.</p> <p>20 MS. ROBESON HANNAN: They do, so I was just</p> <p>21 getting ready to do that. Mr. Butz, could you raise your</p> <p>22 right hand. Do you solemnly affirm under penalties of</p> <p>23 perjury that the statement you're about to make are the</p> <p>24 truth, the whole truth, and nothing but the truth?</p> <p>25 MR. BUTZ: I do.</p>

<p style="text-align: right;">9</p> <p>1 EXAMINATION OF MR. BUTZ BY COUNSEL FOR THE APPLICANT 2 BY MR. HARRIS: 3 Q Okay. Thank you, Mr. Butz. So can you tell us 4 a little bit about your family's history in -- in farming 5 here and on this property? 6 A Yeah, sure. So briefly, I'm a -- I'm a lifelong 7 farmer here in Montgomery County. I actually grew up at 8 the farm right next door. My brother still lives in the 9 same farmhouse that we grew up in. The farm where the 10 winery sits, it's been in my family's -- been in my 11 family's name since the 60s. And as a kid, I basically 12 have continued -- I've continually farmed those -- those 13 lands for my whole career. 14 Really, farming's been the only career I've ever 15 had outside of some odd jobs in college and whatnot. I -- 16 I came home, took over the family farm from my mother, and 17 then I and my three other brothers have run it 18 continuously really for the last 30 plus years since then. 19 So you know, about -- I guess about 15 years ago 20 now, my -- my wife and I were sort of trying to think 21 about, what does the future of Windridge Farm look like? 22 Current -- our current Windridge Farm operations, which 23 still exist, are -- are pretty traditional commodity 24 crops, right? So we grow corn, wheat, soy, hay, barley, 25 you know, all those different -- different kinds of crops.</p>	<p style="text-align: right;">11</p> <p>1 bit challenging because although the -- although the 2 zoning -- the agricultural zoning allowed for a farm 3 winery, because it was a greenfield site and there was no 4 existing building, there was really no pathway for me to 5 build a -- a -- a farm alcohol or a retail building in an 6 agricultural zone. So I actually had to apply for a full 7 commercial building permit on that site and worked -- 8 worked extensively with Park and Planning and DPS to get 9 that done. We were the first project to ever go through 10 that process. And since then the law's been changed to 11 allow retail buildings on -- as part of accessory uses. 12 And, so I -- I may be one of the last to go through that 13 process, but I think -- I think as it relates to -- I -- 14 I'd like -- can I speak a minute on this 5,000 -- 15 Q Sure. 16 A Yeah. So I think it might be a good time to 17 talk about that. So we worked really hard to -- to 18 develop a pre preliminary plan or a preliminary plan based 19 on kind of our vision what the -- of the site was. But 20 then in -- in the -- in-between the time that we got that 21 preliminary plan approved and we wanted to start 22 construction, COVID hit. And for a whole bunch of 23 reasons, it was just not feasible for us to build a 5,000 24 square foot standalone tasting room at that time for -- 25 for budgetary reasons and -- and not understanding what</p>
<p style="text-align: right;">10</p> <p>1 But doing that farming kind of requires access to large 2 tracts of land that are in close proximity to each other. 3 And that's getting tougher and tougher to do in -- in 4 Frederick and Montgomery Counties. 5 And, so, you know, we -- we were like, okay, 6 well what does the future of Windridge look like? And -- 7 and we sort of hit on grape growing as an alternative. So 8 12 years ago we planted our first vineyard, and my plan 9 was honestly just to sell fruit in the local market. And 10 we did that for about five years, but then along the way, 11 I guess -- the -- the way that I tell my customers is I 12 sort of got -- sort of covetous of the fruit, right? I -- 13 I felt like I was growing good fruit and I wanted to try 14 to make wine. 15 And, so in 2017 we made our first Vintage of 16 wine and then started selling in 2019 out of a small 17 pavilion building on that farm where the winery building 18 is now. And then in 2020 we built a new winery and 19 tasting room and -- and the facilities you see there now. 20 Q And so let -- let's turn back to 2019 then. Is 21 that when you got the preliminary plan approval from Park 22 and Planning to -- to -- to build the -- the winery and -- 23 and wine tasting room? 24 A Yeah, so -- so that's correct. So I think it 25 might be useful to understand our case has always been a</p>	<p style="text-align: right;">12</p> <p>1 COVID meant. And so what we did is we built a much 2 smaller tasting room over top of the existing winery and 3 that that tasting room is 1,500 square feet. So it's a 4 fraction of what -- of what our vision was. And -- and 5 we've been operating that way ever since. But our vision 6 always was to have a more developed tasting room. We -- 7 we aspire to sell fine wine and deliver excellent service 8 to our customers and, you know, we aspire someday to -- to 9 be able to do that in that new building. 10 Q And so was -- was that construction of a 5,000 11 square foot tasting room approved under the preliminary 12 plan in 2019? 13 A Yeah. No, it -- it was. Absolutely, it was 14 approved, yeah. 15 Q Okay -- okay. And -- and the winery and the 16 barrel room as well that was all approved? 17 A Yep. Yeah. 18 Q And -- and the parking and the access, is that 19 all the same as well? 20 A Yeah, it -- it is. All of those things were 21 approved and -- and any deviations from the preliminary 22 plan, like whether -- whether it be parking or whatever, 23 that was all done with consultation of -- of staff and -- 24 and all of that. So we, you know, I kind of pride myself 25 in walking through the front door as opposed to sort of</p>

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<p>13</p> <p>1 begging for forgiveness later, so.</p> <p>2 Q And I believe you, as part of the preliminary</p> <p>3 plan, you had the peripheral approvals for forest</p> <p>4 conservation and storm waters and --</p> <p>5 A Yes --</p> <p>6 Q -- all that?</p> <p>7 A Yes. All of that, all of that was approved.</p> <p>8 Yeah.</p> <p>9 Q All right. So --</p> <p>10 MS. ROBESON HANNAN: You may need to -- to be a</p> <p>11 consultant for other wineries after this. Although, that</p> <p>12 would be your competition, so I take it back.</p> <p>13 MR. BUTZ: Right.</p> <p>14 MR. HARRIS: Well I -- I keep begging him to</p> <p>15 teach me more about it because my wife likes fine wines</p> <p>16 and we enjoy the facility there and, so I -- now I can</p> <p>17 claim my own -- I know a winemaker, and it -- it's</p> <p>18 elevated my stature greatly.</p> <p>19 BY MR. HARRIS:</p> <p>20 Q All right, so -- so let's talk about where you</p> <p>21 want to go from here, you know, this -- the -- you want to</p> <p>22 -- are you saying you want to build the 5,000 square foot</p> <p>23 wine tasting room at some point in the future?</p> <p>24 A Correct. I have -- I have no short-term plans</p> <p>25 to build it, but definitely in the future I'd like to do</p>	<p>15</p> <p>1 customers?</p> <p>2 A No, it'll be the same customers. And I'm</p> <p>3 actually -- so -- so we work largely on a reservation</p> <p>4 system. And, so I -- I actually think that net -- net we</p> <p>5 will have fewer customers coming across the gate because I</p> <p>6 will be able to offer more services to those customers and</p> <p>7 they'll stay there longer. I -- I can offer them a, kind</p> <p>8 of, a more complete experience. And that's really my</p> <p>9 goal. My -- my goal is to offer -- I don't -- I don't --</p> <p>10 I don't need more customers; I just want to do a better</p> <p>11 job in serving the customers that I have.</p> <p>12 Q Have you had some concerns from customers about</p> <p>13 food or -- or -- or things like that? Is that what</p> <p>14 you're, is driving what you're saying?</p> <p>15 A Yeah. Yeah, absolutely. And so if you -- if</p> <p>16 you look on Yelp, and it was just interesting that this</p> <p>17 happened when I went in front of the planning board, what</p> <p>18 was that? Two weeks ago? Literally the day before I was</p> <p>19 going in front of my planning board hearing, I got a</p> <p>20 one-star review on Yelp and the -- the main focus on the</p> <p>21 review was the fact that the food trucks ran out of food.</p> <p>22 And, although, I try to tell everybody I can't control the</p> <p>23 food trucks, it still reflects on me when they deliver</p> <p>24 poor service to my customers.</p> <p>25 Now, in -- in fairness, that reviewer then went</p>
<p>14</p> <p>1 it. So the -- the primary driver for the Country Inn was</p> <p>2 really to allow us to deliver better service to our</p> <p>3 customers in our existing operations. The existing class</p> <p>4 four winery license has a number of odd restrictions that</p> <p>5 make it difficult for us to deliver what we want to</p> <p>6 deliver to our customers. But, yes, to be clear, I -- I</p> <p>7 -- I do someday want to build that -- that building.</p> <p>8 Q Okay. And assuming you obtained the Country Inn</p> <p>9 conditional use and the Country Inn liquor license, about</p> <p>10 which you spoke --</p> <p>11 A Right.</p> <p>12 Q To what extent -- extent will the operations</p> <p>13 change? Will it be the same parking area that you have</p> <p>14 now?</p> <p>15 A Right. Yes, so -- right, same -- same parking</p> <p>16 area. Yes, absolutely.</p> <p>17 Q And with the exception of the 5,000 square foot</p> <p>18 tasting room, that again was part of the preliminary plan,</p> <p>19 it'll be the same building facilities as well?</p> <p>20 A Yes, yes.</p> <p>21 Q Do -- do you expect to use the same number of</p> <p>22 employees?</p> <p>23 A Yes.</p> <p>24 Q Have you -- do -- do you expect any increase in</p> <p>25 the number of customers and traffic or will it be the same</p>	<p>16</p> <p>1 down to torch my wine down completely and all of that, so</p> <p>2 that was part of the one-star review. But to me it just</p> <p>3 really -- the review really just highlighted -- and if you</p> <p>4 look back through our reviews, you'll see periodically, no</p> <p>5 food, no options, all they had was water, the food truck</p> <p>6 was unreliable. And -- and like I said, I just -- I'm</p> <p>7 constantly struggling having to deal with that.</p> <p>8 MS. ROBESON HANNAN: Okay.</p> <p>9 Q The -- well, based on your experience operating</p> <p>10 the winery, have you ever observed any traffic problems on</p> <p>11 Darnestown Road getting in or out?</p> <p>12 A No, I -- I haven't. No, I have not.</p> <p>13 Q The -- how -- I -- having been there, I know</p> <p>14 that you have live music on Friday nights, has that ever</p> <p>15 posed a problem for you?</p> <p>16 A We have never received a noise complaint. And</p> <p>17 if you look at the statute, I'm not allowed more than 55</p> <p>18 decibels on my property edge. And if -- if you look up,</p> <p>19 there's a -- a chart that shows you, kind of, like what</p> <p>20 that means. But I mean that's -- that is quiet</p> <p>21 conversation at the property edge. It's -- it's a very,</p> <p>22 very low standard. So Country Inn or not, I have to meet</p> <p>23 that standard.</p> <p>24 Q And have you spoken with the agriculture folks</p> <p>25 in the county about their thoughts on your operation?</p>

<p>17</p> <p>1 Either both now and in the future?</p> <p>2 A Yes, they are. The Office of Agriculture is</p> <p>3 supportive of my application, yes.</p> <p>4 MR. HARRIS: Okay. Ms. Hannah, I -- I don't</p> <p>5 want to shortcut this, but as I said at the outset,</p> <p>6 subject to answering any questions that you have and</p> <p>7 clarifying the confusion that I created, I -- I would, you</p> <p>8 know, be prepared to go right to Mr. Butz's conclusions on</p> <p>9 the primary findings that you need to make based on,</p> <p>10 again, his experience running this for two years. It's --</p> <p>11 it's -- it's a unique situation for me. I've never</p> <p>12 applied for a conditional use where it's a conditional use</p> <p>13 for an existing operation and it's really just, you know,</p> <p>14 changing the -- the name of it and what that allows to --</p> <p>15 to go on there. So I think Mr. Butz --</p> <p>16 MS. ROBESON HANNAN: Let me make -- I</p> <p>17 understand, and I'm sorry to interrupt. Let me just --</p> <p>18 explain a little bit why we're asking for more specificity</p> <p>19 on the existing operations and it's because I don't know</p> <p>20 what the -- I have to make findings, like, you know,</p> <p>21 there's enough parking or, you know, that -- whether</p> <p>22 you're going to have large events in peak hours, and those</p> <p>23 are all to address potential adverse impacts of the use.</p> <p>24 So if you're going to have unlimited number of</p> <p>25 people during a weekday, your statement -- one of your</p>	<p>19</p> <p>1 additional buildings. The --</p> <p>2 MS. ROBESON HANNAN: But I have findings of fact</p> <p>3 to make that are different from -- I understand because</p> <p>4 it's confusing because you have a preliminary plan</p> <p>5 approval, but I have findings of fact to make that are</p> <p>6 different, that don't relate to the preliminary plan. So</p> <p>7 when you pull in a conditional use, the conditional use</p> <p>8 looks at the impacts of the operation on neighboring</p> <p>9 properties. So I'm not saying there are adverse impacts,</p> <p>10 I'm just saying, I need clarification of what you're doing</p> <p>11 in order to make the findings because the findings here</p> <p>12 are different than the preliminary plan.</p> <p>13 MR. HARRIS: Okay. All right. Well let --</p> <p>14 let's break them down into in -- individual components.</p> <p>15 Perhaps the one that, you know, stands out the most, that</p> <p>16 is typically important to understand is the traffic</p> <p>17 impact, okay?</p> <p>18 MS. ROBESON HANNAN: Right.</p> <p>19 MR. HARRIS: And -- and I think we both agree</p> <p>20 that that traffic impact was examined as part of the</p> <p>21 preliminary plan. And -- and the --</p> <p>22 MS. ROBESON HANNAN: Well -- I'm sorry I keep</p> <p>23 interrupting.</p> <p>24 MR. HARRIS: No, go ahead.</p> <p>25 MS. ROBESON HANNAN: I apologize.</p>
<p>18</p> <p>1 statements says that you have large events on Fridays</p> <p>2 between 1:30 and 8:00. So what I'm asking, and -- and I</p> <p>3 did get something from Mr. Harris saying, well, that's</p> <p>4 spread out, but we have to be very specific, so DPS -- I</p> <p>5 can't just approve existing operations when nobody wants</p> <p>6 the -- nobody knows what the existing operations are. And</p> <p>7 I need to know what they are in order to make the findings</p> <p>8 that I need to make. So with that --</p> <p>9 MR. HARRIS: Okay.</p> <p>10 MS. ROBESON HANNAN: -- go ahead. If for</p> <p>11 instance, you know, you want to keep the existing</p> <p>12 attendance, well, what is the existing attendance? You --</p> <p>13 you follow? This is different than the preliminary plan</p> <p>14 and it looks for different things. And so what we're</p> <p>15 looking at is the impact, the potential impacts of this</p> <p>16 use on the surrounding area.</p> <p>17 MR. HARRIS: Okay, I -- I appreciate that. But</p> <p>18 let -- let me understand a little better because the --</p> <p>19 the -- the physical facilities that would be operating</p> <p>20 under this are exactly the same physical facilities that</p> <p>21 are approved today. Not -- not all built, again, the</p> <p>22 5,000 square foot tasting room -- room was approved under</p> <p>23 the preliminary plan and could be built tomorrow, with or</p> <p>24 without this conditional use. And -- and Mr. Butz is not</p> <p>25 planning anything in addition to that, you know, from</p>	<p>20</p> <p>1 MR. HARRIS: No, I want an answer to this part.</p> <p>2 MS. ROBESON HANNAN: LATR is different because</p> <p>3 we -- that looks at the roadway capacity, all right?</p> <p>4 MR. HARRIS: Okay.</p> <p>5 MS. ROBESON HANNAN: So -- so that's one thing.</p> <p>6 But we look at are there cues, is there, you know -- and</p> <p>7 I'm not saying any of that exists, I'm just saying I have</p> <p>8 to address it. So if you're having a large event in the</p> <p>9 peak hour, like I have to be able to say, But there won't</p> <p>10 be cues and the access will be safe and there won't be</p> <p>11 temporary congestion. This is -- it looks at different</p> <p>12 traffic impacts.</p> <p>13 BY MR. HARRIS:</p> <p>14 Q Okay, fair -- fair enough. And I -- I think,</p> <p>15 you know, that you may have just touched on a word that</p> <p>16 needs to be clarified. It's not events as much as the</p> <p>17 operation of the -- the winery. People come to the winery</p> <p>18 to enjoy the wine in the scenery, et cetera. It's not an</p> <p>19 event, it's -- it's like a restaurant, okay? You can --</p> <p>20 although, you said you do have some special events.</p> <p>21 What's the size of those events?</p> <p>22 A Less than a hundred. Yeah, I mean average --</p> <p>23 average event size is maybe 20, 25 to 40 people. And even</p> <p>24 if -- even -- let's say, if we make an argument that I</p> <p>25 build this new building, that building is still not large</p>

<p>21</p> <p>1 enough to house a very large event anyway. And -- and 2 also our, you know, it's a practical matter, our septic 3 systems can't handle large events. I mean there -- 4 there's certain -- there's certain bounds around -- 5 regardless of the zoning on this property about what I can 6 and can't do, that I think gives sort of inherent 7 protections to my neighbors, you know, I -- I can't -- I 8 can't emit noise pollution beyond my property edge. I 9 can't emit light pollution beyond my property edge. 10 Because I'm on well and septic, I have defined seat counts 11 that -- that have to be met for purposes of -- of -- of -- 12 of my septic approval, right? And -- and those things 13 taken together -- 14 MS. ROBESON HANNAN: I couldn't understand -- 15 you have to meet what counts? 16 MR. BUTZ: So -- so like I have -- because I'm 17 on well and septic, right? 18 MS. ROBESON HANNAN: Yeah. 19 MR. BUTZ: My septic system is designed and 20 engineered to accommodate a certain number of seats. So 21 I'm -- I'm not on a public sewer, so there are only so 22 many, quote unquote, seats I can have on this property 23 regardless. And so those -- those things put, you know -- 24 they're kind of protections in place for my neighbors. 25 Even if I wanted to be a bad actor or somebody, you know</p>	<p>23</p> <p>1 impact your future approval, it just says for now. 2 MR. BUTZ: Okay. 3 MR. HARRIS: Okay, so -- 4 MS. ROBESON HANNAN: You follow what I'm saying? 5 MR. HARRIS: I want to make sure I do because I 6 don't want to paint Mr. Butz into a corner, you know -- 7 MS. ROBESON HANNAN: Neither do I. 8 MR. HARRIS: Yeah, he -- he wants the Country 9 Inn for the reasons already stated. In an interim period, 10 it will really be the same operation as it is today, but 11 offering additional alcohol. In the longer term, it will 12 expand to what is already approved, but -- but not beyond 13 what was in the preliminary plan, so. And that may 14 include, at some point in time, expansion of the septic 15 systems. We don't want to be prevented from doing that or 16 saying, Well, you can only use a new septic system for the 17 winery, you can't use it for the Country Inn. That would 18 be, you know, impossible to monitor anyway. 19 MS. ROBESON HANNAN: Understood. I -- I do 20 understand. Let me explain how the process works. If and 21 when you decide to do the larger commercial kitchen, you 22 would come back for an amendment to this conditional use 23 approval. 24 Now, we have two types of amendments. We have a 25 major amendment and a minor amendment. If one is an</p>
<p>22</p> <p>1 -- it's just there -- there -- I guess -- I guess what I'm 2 saying, yeah, there are these protections in place 3 regardless of whether the zoning has changed or not. 4 MS. ROBESON HANNAN: Do you know what the cap on 5 seats is? 6 MR. BUTZ: Currently, it's -- I'll have to look 7 it up. It's -- it's in my plan. 8 MS. ROBESON HANNAN: Somewhere -- okay. I just 9 -- this is very helpful to me because the statements of 10 justification did not specify all that -- this. So what I 11 could do is, for my purposes to say, okay, this is the 12 existing operation, or I could put a condition saying 13 large events are limited to the number of seats permitted 14 by your septic capacity at present. 15 MR. BUTZ: So I do have approval for another 16 septic field, you know -- 17 MS. ROBESON HANNAN: I know that -- but -- 18 MR. BUTZ: -- but -- 19 MS. ROBESON HANNAN: -- when you go to the 20 commercial -- when you move to the commercial condition -- 21 kitchen, I'm sorry. When you move to the commercial 22 kitchen, you're going to have to modify this. 23 MR. HARRIS: That's right. 24 MR. BUTZ: Right. 25 MS. ROBESON HANNAN: So -- so this doesn't</p>	<p>24</p> <p>1 administrative process and the other requires a hearing, 2 but I don't want to -- what we're doing today is simply 3 approving what you have available right now, okay? It 4 doesn't preclude you from coming back and getting approval 5 for the larger part, okay? I can't -- I can't approve the 6 commercial kitchen because that was never reviewed or 7 anything by staff. 8 Now, you could come in, you could amend your 9 application to include the commercial kitchen, all right? 10 Amend this application to include the commercial kitchen 11 and do it all at once, but you only have two years. Well, 12 you may be okay with that because you're building the -- 13 you're building the -- the tasting room. 14 So you could amend your application now. 15 Unfortunately, you would have to go back to staff -- well, 16 it may have to go back to staff anyway because I'm not 17 sure they were aware of the 5,000 square foot tasting 18 room, but you could try for it all now. Or you -- or you 19 could come back for an amendment to the conditional use at 20 a future time. 21 So where you are position-wise right now is you 22 would be able to build the tasting room with, you know -- 23 so that I know the operations for the conditional use that 24 I can make the finding that there's no noise, there's no 25 traffic, you know, congestion, there's no lighting impact,</p>

<p>25</p> <p>1 all that kind of stuff. So those are the options here. 2 MR. HARRIS: Okay. Let -- I -- now you -- you 3 actually raised a concern in my mind because if -- if by 4 example, if I were to come in and I wanted to -- to build 5 a -- a new Country Inn, had nothing on the ground, okay? 6 Just a piece of dirt. I could tell you what I wanted to 7 do and you could approve it. It wouldn't have to be on 8 the ground at the time of your approval. 9 MS. ROBESON HANNAN: No. No. 10 MR. HARRIS: 99 percent of conditional uses 11 don't exist when the applicant (crosstalk) -- 12 MS. ROBESON HANNAN: You're right. 13 MR. HARRIS: -- in. So we actually have a more 14 advanced situation here because 90 percent, just to pick a 15 random number, of what will be there under the conditional 16 use, already is there. Compared to a typical case where 0 17 percent is there. So we have excellent evidence as to 18 what the impact of this conditional use is. We're not 19 speculating, we're not asking a -- you know, somebody to 20 opine on something. We have actual facts from two years 21 of operations. 22 And -- and -- and, so I -- you know, I do not 23 think that we should need to come in and seek an amendment 24 to the conditional use. We're looking to get the -- the 25 conditional use approved now for 100 percent of what was</p>	<p>27</p> <p>1 MS. ROBESON HANNAN: -- this does not approve 2 the commercial kitchen. I have no ability to approve a 3 commercial kitchen that -- is that going to add to the 4 5,000 square feet? 5 MR. HARRIS: No -- no, the commercial kitchen 6 would be within the existing structure, so that's where 7 staff is correct, it doesn't -- 8 MS. ROBESON HANNAN: The winery -- the winery -- 9 MR. HARRIS: The wine -- the wine tasting room 10 would be the only additional structure. 11 MS. ROBESON HANNAN: But that doesn't exist. 12 Okay, I understand. 13 MR. HARRIS: Right. So -- so, again, the 14 application and the statement we submitted talked about 15 converting the existing, I'll call it catering kitchen to 16 a full kitchen, okay? And that we already have the septic 17 approval for that because again, that was reviewed as part 18 of the preliminary plan. So just to be perfectly clear, 19 we are asking for that to be part of this approval because 20 it already is approved. And -- and whether it's -- 21 MS. ROBESON HANNAN: The problem -- it's -- the 22 mix up is, it's approved as a preliminary plan. It's not 23 approved as a conditional use. Think of a conditional use 24 a little bit at the same level of detail as a site plan 25 because there is no site plan and conditional uses because</p>
<p>26</p> <p>1 approved already in the preliminary plan. And that, you 2 know, our operating statement that we submitted said that. 3 And so I -- I don't know why we shouldn't be able to get 4 that approval. That's what we have always been asking 5 for. 6 MS. ROBESON HANNAN: Well, staff -- the staff 7 report said there's no changes to existing conditions. 8 Staff clearly was under the impression that you don't even 9 want the 5,000 square foot tasting room. 10 MR. HARRIS: Okay -- they -- I'm looking at 11 their status report and I -- I see what you're saying. 12 It's -- it says, adding this additional use while 13 utilizing the existing structures and site conditions, 14 with no proposed exterior changes, will allow us to do 15 blah, blah blah, but they -- in that report, they also 16 note that there is a 5,000 square foot tasting room 17 approved. So there was some -- 18 MS. ROBESON HANNAN: But they are under the -- I 19 think they are under the impression, and I just -- I just 20 sent an e-mail this morning and you -- you're CC'd and 21 saying, Is this what you recommended approval of on your 22 status report? 23 MR. HARRIS: Okay. 24 MS. ROBESON HANNAN: So -- so this is -- 25 MR. HARRIS: Yeah.</p>	<p>28</p> <p>1 they combined the conditional -- when you have a 2 conditional use. So if you have new construction, even if 3 it's internal, there's additional things you have to 4 submit, like floor plans, you know, you have to show in 5 detail how the -- the thing is going to work, okay? 6 And I'm not making this up to be hard on Mr. 7 Butz at all. It sounds like he's been in the forefront. 8 I -- I really do admire, it seems to me, that you've been 9 in the forefront of surviving as -- as an agricultural use 10 and keeping your property in the family hands. And that's 11 -- that's great. 12 But a conditional use requires different 13 findings. It would need a floor plan to show how it 14 works. They usually have a fire access plan. So I'm just 15 saying, it's -- the preliminary plan is -- you're 16 comparing apples and oranges. So if you want -- this is 17 my suggestion, if you want to take -- do you understand 18 what I'm trying to point out? It's -- it's not approved 19 as a conditional occupational use. 20 MR. HARRIS: I -- I understand the conditional 21 use is not approved, but what I'm saying is that if -- if 22 -- well, I'm trying to think of an analogy. We are only 23 seeking conditional use for the physical facilities and 24 the impacts that we already have. So I -- 25 MS. ROBESON HANNAN: Well, I guess the</p>

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<p style="text-align: right;">29</p> <p>1 commercial, what is the commercial kitchen -- what are the 2 impacts? Do the impacts of the -- well first of all, if 3 you're seeking the commercial kitchen, that has to be 4 shown in a floor plan in the conditional use. Second, I 5 don't think, I really don't think, staff understood that 6 this was the case. 7 MR. BUTZ: I think if -- if I could interject 8 there a little bit. The commercial kitchen has already 9 been approved, right? 10 MS. ROBESON HANNAN: That's -- 11 MR. BUTZ: Because I have a commercial building 12 permit. 13 MS. ROBESON HANNAN: No, it hasn't. 14 MR. BUTZ: It has because it was part of my 15 commercial build. The commercial kitchen has certain 16 restrictions on it. The restriction is -- is that I can't 17 have a grease trap because that impacts my septic flows. 18 MS. ROBESON HANNAN: Right. Right. 19 MR. BUTZ: So if I want to upgrade the level of 20 the commercial kitchen, I have a HACCP rated commercial 21 kitchen in that building today. The issue is -- is if I 22 want to upgrade that from a warming kitchen to a kitchen 23 with a fryer or something else that would require a grease 24 trap, well and septic weighed in as part of my 25 application, and they -- and I acknowledged and agreed</p>	<p style="text-align: right;">31</p> <p>1 for the commercial kitchen, then submit them because 2 they're required. 3 MR. BUTZ: Well -- 4 MS. ROBESON HANNAN: And I'm not -- I'm really 5 not trying -- I'm really not trying -- 6 MR. BUTZ: You have my -- you have my building 7 plans of my existing kitchen. 8 MR. HARRIS: Look, let me -- let me try this -- 9 MS. ROBESON HANNAN: I don't in this record. I 10 don't have them in this record. 11 MR. HARRIS: Let me try this. So -- so there 12 are the -- the specific -- the general findings that you 13 have to make. There are some, you know, six or eight, 14 okay? You -- perhaps if we walk through those and then 15 you let us know what other findings beyond those you -- 16 you believe you have to make and we'll see if we can -- 17 can find them. Because, for instance, I think condition 18 -- element one, satisfy any applicable previous approvals 19 on the subject site. You know, I think -- 20 MS. ROBESON HANNAN: Well, that's fine. 21 MR. HARRIS: -- we can even state them. 22 MS. ROBESON HANNAN: Okay, well let me say this 23 -- 24 MR. HARRIS: Could we walk through those? Would 25 that help?</p>
<p style="text-align: right;">30</p> <p>1 that I would have to upgrade my septic system and put in 2 the new septic field. So the commercial kitchen exists. 3 The issue is just whether it would be upgraded. 4 MR. HARRIS: To -- to me it's pretty much if -- 5 if I wanted to convert my house to a Country Inn, I would 6 have to seek a Country Inn use permit, but I would use the 7 same kitchen. And, so I, you know, I -- I -- I would 8 simply say, Here's my house. And -- and -- and I don't 9 think it would be necessary for the hearing examiner to 10 look at, Well, your kitchen is this dimension or that 11 dimension, it -- that's really irrelevant. It's the 12 impact of the overall operation. And -- and that, I 13 think, is, you know, again, here demonstrated by the fact 14 that we've got this operation existing today. Whether 15 they're serving sandwiches or a cooked meal doesn't change 16 anything other than a customer satisfaction. 17 MR. BUTZ: And I -- I think it's also, it should 18 be noted that -- that I could build that 5,000 square foot 19 tasting room and put a commercial kitchen in it without a 20 Country Inn use designation. 21 MS. ROBESON HANNAN: I know that. 22 MR. BUTZ: That -- that -- 23 MS. ROBESON HANNAN: I'm trying -- I'm trying to 24 tell you what I need to make findings on. You don't have 25 some of the required information. If you have the plans</p>	<p style="text-align: right;">32</p> <p>1 MS. ROBESON HANNAN: Let me say -- what I'm 2 going to do is this: you need to submit floor plans for 3 the 5,000 square foot tasting room. I don't make this up, 4 okay? This is -- this is for the new one. For the one 5 that doesn't -- it's approved, but it doesn't exist, all 6 right? So you need to submit floor plans. 7 MR. HARRIS: Okay. 8 MS. ROBESON HANNAN: Then I'm going to refer it 9 back to staff because I don't think staff understood that 10 this -- I'm required, if there's changes or if it isn't 11 what they thought they were approving, I'm required to 12 send it back to staff. And Mr. Butz, I see you looking 13 frustrated, but this is my name on the bottom line here 14 and I have to make sure -- 15 MR. BUTZ: My -- my frustration is irrelevant. 16 It -- it's right. No, I understand that. 17 MR. HARRIS: We -- Ms. Robeson, we want you to 18 be entirely satisfied. We recognize your role here, and 19 -- and I want to try to do as much of that, if not all of 20 it, today if we can. 21 MS. ROBESON HANNAN: Understood. 22 MR. HARRIS: If we can't -- 23 MS. ROBESON HANNAN: So you can -- you can -- 24 what I'm going to do is pull up the zoning ordinance and 25 --</p>

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<p>33</p> <p>1 MR. HARRIS: That would be useful. And then we 2 can walk through it, and we can see the extent to which we 3 can satisfy your requirements to -- to -- to make those 4 findings. 5 MS. ROBESON HANNAN: But I still need to -- 6 okay. Let's go back one minute, okay? Just -- so you 7 have a tasting kitchen, where is the tasting kitchen? In 8 the winery? 9 MR. HARRIS: In -- it's -- 10 MS. ROBESON HANNAN: I mean the warming kitchen. 11 MR. BUTZ: Yes. 12 MS. ROBESON HANNAN: The warming kitchen. So 13 the warming kitchen -- 14 MR. BUTZ: In the winery. 15 MS. ROBESON HANNAN: Let me -- let me go back 16 here a second. Oh, I just clicked out of that. Just give 17 me a moment. 18 MR. HARRIS: Uh-huh. 19 MS. ROBESON HANNAN: Okay, now I'm going to -- 20 to share my screen. Okay, I'm showing Exhibit 30. Do you 21 see this? 22 MR. HARRIS: Yes. That's the existing -- oh, 23 Exhibit 30? Oh yeah, that's what I submitted this 24 morning. Yes. That -- that's the one that shows the -- 25 the proposed tasting room, yes.</p>	<p>35</p> <p>1 of them because, again, they were the ones who reviewed 2 the -- the original plans for the preliminary plan and 3 didn't have a concern then, and -- and then come back to 4 you. Alternatively, if -- if Mr. Butz would prefer, we 5 could simply table the 5,000 square foot tasting room, and 6 in that case there would be zero change to any of the, you 7 know, buildings. All the existing buildings would remain. 8 Are -- are both of those options appropriate, Ms. 9 Robeson, or -- 10 MS. ROBESON HANNAN: You can do either -- you 11 can do -- you can do either. The other -- the other 12 option is take -- you know, I know you -- your -- I don't 13 know how immediate your thing is. The other option is to 14 clearly delineate what you have approved on the 15 preliminary plan, including commercial kitchen and get it 16 all done at -- at once. Which would mean -- 17 MR. HARRIS: Robert, personally, I think that 18 would be -- 19 MS. ROBESON HANNAN: -- which would mean -- 20 MR. HARRIS: -- more efficient. 21 MS. ROBESON HANNAN: What? 22 MR. HARRIS: No, I'm sorry, I was following up 23 Robert here, but to see what he wants to do. 24 MS. ROBESON HANNAN: Well, do you want to go off 25 the record for like 15 minutes and -- and then you --</p>
<p>34</p> <p>1 MS. ROBESON HANNAN: Okay, so you have a tasting 2 kitchen in this -- in the -- in what's marked as the 3 existing winery? 4 MR. BUTZ: A warming kitchen, yes, correct. 5 MS. ROBESON HANNAN: I mean -- I keep saying a 6 tasting kitchen. Yeah. Okay, so we have that. So what's 7 going to be in the 5,000 square foot tasting room? Just 8 seating? 9 MR. BUTZ: I don't know. I haven't -- we 10 haven't gotten close enough to imagining what that space 11 looks like yet. 12 MS. ROBESON HANNAN: Okay. But if you look at 13 731-B of the zoning ordinance, all right? 731-B. Okay, 14 it says, The applicant -- If exterior changes are 15 proposed, you need footprints, ground floor layouts, and 16 heights of all buildings and structures. So -- so -- and 17 they ask those for a reason, so they can get an idea of 18 what the impacts are going to be. Now, I know you're on a 19 40-acre property, but it's still part of the application 20 process. So if you have new construction, then you have 21 to submit that. 22 MR. HARRIS: All right, well we've got two 23 options then. One, we could prepare those and continue 24 the hearing until we submit those and have them reviewed 25 by staff. I -- I anticipate no problem with staff review</p>	<p>36</p> <p>1 you-all can discuss it and -- 2 MR. HARRIS: That would be great. That -- 3 that's a perfect suggestion. 4 MS. ROBESON HANNAN: If you need more time, tell 5 me. 6 MR. HARRIS: No -- no, five minutes should do 7 it. If -- if we can come back then. 8 MS. ROBESON HANNAN: Well, I said 15, so I -- 9 I'll give you 15. We'll go off the record. 10 (Off the record.) 11 THE REPORTER: Okay. Recording is started. 12 MS. ROBESON HANNAN: Thank you. Mr. Harris, did 13 you have -- let me stop sharing my screen. Did you have 14 the opportunity to discuss what you would like to do? 15 MR. HARRIS: Yes, ma'am. And I think this will 16 greatly simplify all of our jobs today. Mr. Butz will 17 table the 5,000 square foot wine tasting room proposal. 18 That -- and would come back in for an amendment to the 19 conditional use whenever he is ready to proceed with that, 20 and at that time we'd have plans for it to satisfy you. 21 In the meantime, we would like to simply obtain 22 conditional use approval for the -- the existing 23 facilities on the property, as -- as they are today, but 24 allow them to be used for Country Inn purposes. 25 MS. ROBESON HANNAN: Okay. To enable you to</p>

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<p>37</p> <p>1 change the liquor license and other -- other things?</p> <p>2 MR. HARRIS: Yes, ma'am.</p> <p>3 MS. ROBESON HANNAN: Okay, so assuming that's</p> <p>4 it, I still need a little bit of clarification on the</p> <p>5 conditions -- on the operations. So if I have a condition</p> <p>6 that simply says, you'll have the number of seats allowed</p> <p>7 by your existing septic capacity, are you okay with that?</p> <p>8 MR. HARRIS: I -- I don't know what that number</p> <p>9 is, so I can't answer that.</p> <p>10 MR. BUTZ: Existing capacity for events you</p> <p>11 mean?</p> <p>12 MS. ROBESON HANNAN: Yes.</p> <p>13 MR. BUTZ: Yes, fine.</p> <p>14 MS. ROBESON HANNAN: Okay. If you wouldn't</p> <p>15 mind, I have to keep the record open for 10 days to get</p> <p>16 the transcript, if you wouldn't mind looking up that</p> <p>17 number. So DPS can -- you know, they have to inspect</p> <p>18 every two years or something like that, so would you mind</p> <p>19 looking that number up and submitting it into the record?</p> <p>20 MR. HARRIS: Okay.</p> <p>21 MS. ROBESON HANNAN: Okay. And do you have a</p> <p>22 problem with a condition limiting sound to what's</p> <p>23 permitted by the zoning ordinance?</p> <p>24 MR. HARRIS: No problem.</p> <p>25 MS. ROBESON HANNAN: Okay. Now the -- the</p>	<p>39</p> <p>1 MR. BUTZ: So -- no, thank you for bringing that</p> <p>2 up. So let's -- so let's go back to that. When I said</p> <p>3 yes for an existing -- when I said yes to -- to limit</p> <p>4 events to existing seating capacity, what I would like to</p> <p>5 do is limit the -- the capacity of events to what's</p> <p>6 currently permitted under what I have. I -- I don't want</p> <p>7 to get less as part of my Country Inn zoning designation</p> <p>8 process. That would potentially require that I bring in</p> <p>9 temporary portable bathrooms, which is also currently</p> <p>10 permitted. So to be clear, as part of -- as part of my</p> <p>11 Country Inn rezone process, I (inaudible; technical</p> <p>12 difficulties) more restrictions.</p> <p>13 MS. ROBESON HANNAN: This is -- this is what I'm</p> <p>14 trying to deal with, okay? Let me -- it's not trying to</p> <p>15 cut you off of seats. What I'm trying to do is say to</p> <p>16 you, if 227 people come during the peak period, what's</p> <p>17 that going to do to the road?</p> <p>18 MR. HARRIS: They -- they do not come during the</p> <p>19 peak period. That's --</p> <p>20 MS. ROBESON HANNAN: But your statement says you</p> <p>21 want the events to come -- you know, you want these</p> <p>22 special events to occur during the peak periods.</p> <p>23 MR. BUTZ: I -- I would submit that even if they</p> <p>24 did come on the peak period, Route 28 is an arterial road</p> <p>25 that sees 14,000 trips a day. It's de minimus.</p>
<p>38</p> <p>1 special events, I don't think anything -- when you just</p> <p>2 explained your special events, I'm -- I'm far less</p> <p>3 concerned. The thing just the -- one of the statements</p> <p>4 just said special events without limitation, and I didn't</p> <p>5 know if that meant 227 people or -- or whatever. So if I</p> <p>6 limit the number of seats, what are you going -- how do</p> <p>7 you want to address -- I just have to address somehow</p> <p>8 whether it's factual finding that the special events are</p> <p>9 -- are they going to occur during the peak hour? And will</p> <p>10 there be no impact, even if they do occur during the peak</p> <p>11 hour?</p> <p>12 MR. BUTZ: I -- I think perhaps the best way to</p> <p>13 look at that is the special events that I'm currently</p> <p>14 allowed under the -- under the Montgomery County Farm</p> <p>15 Alcohol Statute and my Class Four Farm Winery License.</p> <p>16 I'm not asking for any more special events than I'm</p> <p>17 currently entitled to now.</p> <p>18 MS. ROBESON HANNAN: So that goes up to 227 or</p> <p>19 225 I think.</p> <p>20 MR. BUTZ: Yeah.</p> <p>21 MS. ROBESON HANNAN: Well, if you have --</p> <p>22 MR. BUTZ: And that's --</p> <p>23 MS. ROBESON HANNAN: If you have 225.</p> <p>24 MR. BUTZ: Yeah, so actually --</p> <p>25 MS. ROBESON HANNAN: Go ahead.</p>	<p>40</p> <p>1 MS. ROBESON HANNAN: But -- okay. Can you</p> <p>2 imagine 200 -- this what I'm trying to get to. Can you</p> <p>3 imagine 225 people all trying to get into your place</p> <p>4 during the peak period?</p> <p>5 MR. HARRIS: I -- I can imagine that but as --</p> <p>6 I'm sorry, go ahead.</p> <p>7 MS. ROBESON HANNAN: Well, I just -- I'm trying</p> <p>8 to get something to say you're not going to have a traffic</p> <p>9 jam. That's the bottom line.</p> <p>10 MR. BUTZ: I guess that the -- I'm not asking</p> <p>11 for anything more than what I have today.</p> <p>12 MS. ROBESON HANNAN: But I don't know what you</p> <p>13 have.</p> <p>14 MR. HARRIS: Yeah.</p> <p>15 MR. BUTZ: You do know what I have because it's</p> <p>16 in the farm alcohol law and my current class four.</p> <p>17 MS. ROBESON HANNAN: No. No, you're trying to</p> <p>18 say existing conditions. Well you -- it may be in the</p> <p>19 farm alcohol law, but I don't know how many people are act</p> <p>20 -- you're saying just to prove it as is because it's not</p> <p>21 causing a problem, okay? But I don't know what -- but I</p> <p>22 don't know what as is because I don't know what's going on</p> <p>23 there. You're not having -- if you're not having 225</p> <p>24 people a day, then tell me.</p> <p>25 MR. HARRIS: There -- there definitely are not</p>

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11 (41 to 44)

<p>41</p> <p>1 225 people coming during peak period. 2 MR. BUTZ: I don't have the facilities for 3 events that large. 4 MS. ROBESON HANNAN: Then tell me what your -- 5 tell me -- what you're saying -- well, first you're 6 saying, I want what's permitted under the limited use 7 standards, and then you're saying, I don't have the 8 facilities, so what are your caps? 9 MR. HARRIS: I'm -- I'm trying to look for that 10 right now because I -- I want to make sure this doesn't 11 get off track. The -- I -- I can't find the specific 12 paperwork -- 13 MS. ROBESON HANNAN: I need a wine. I need a 14 glass of wine. 15 MR. BUTZ: Yeah, I can help with that. 16 MS. ROBESON HANNAN: But not now. 17 MR. BUTZ: Yeah, yeah, yeah, yeah. I mean, I 18 guess, I -- I'll be honest with you; my -- my confusion is 19 -- is to where the concern's coming from because I'm not 20 asking for any more rights than what I currently have now. 21 MS. ROBESON HANNAN: But -- 22 MR. BUTZ: So I -- I -- what I'd like -- 23 MS. ROBESON HANNAN: You're not -- but this is 24 -- let me try again, okay? You don't have -- in a 25 conditional use, you don't have a right to a permitted</p>	<p>43</p> <p>1 to -- 2 MR. HARRIS: Yep. 3 MR. BUTZ: Yeah, let me -- 4 MR. HARRIS: It's breaking up a little bit. 5 Yeah. 6 MR. BUTZ: Let me -- let -- let me try to answer 7 it this way that I think might be helpful. While it's 8 true -- I -- I have had -- I have had a couple of events 9 at the 220 -- 200-person level, okay? I probably had 10 maybe, in the two years, I've maybe had four events that 11 large. More importantly though, in the normal course of 12 my business, I have in effect -- easily I could say that I 13 have 220 people showing up in a very close proximity. 14 It's not part of an event, it's part of my normal course 15 of business. 16 But if you've ever been out to the winery on a 17 Saturday, for example, there are times where -- it's -- 18 it's very interesting to me that -- that -- it -- there's 19 a whole bunch of psychology that I've learned out here at 20 the winery about, like, when people show up, and it's like 21 -- it's like magic. Like on a Friday, everybody wants to 22 show up at my winery an hour and a half before sunset 23 because they can get a glass of wine and they've 24 calculated that's about the right amount of time they want 25 to spend on my property.</p>
<p>42</p> <p>1 use, okay? You don't. You have to show that you're not 2 going to cause adverse impact. Right now, you have a 3 permitted use that lets you have 225 people at one time on 4 your property. My -- my -- but my job here is to look at 5 the potential impact of that. 6 So in the conditional use, you don't have a 7 right for that, so you have to tell me why having 225 8 people coming on the property could -- without limitation, 9 if they all came at once during peak period, why isn't 10 that a problem? And what I'm saying to you is: if you 11 want to approve what you have now, you have to tell me 12 what's actually going on now because you're not having the 13 225 people. 14 MR. HARRIS: No, I -- I think that would -- may 15 have been a mistake. Here -- there -- there may be 225 16 people there at any given time, but number one, they're 17 not arriving during a peak period. Number two, the -- 18 MS. ROBESON HANNAN: When are they arriving? 19 MR. HARRIS: We lost -- 20 MS. ROBESON HANNAN: Your statement says they 21 are. 22 MR. HARRIS: Say it again. We -- we -- we lost 23 your audio a moment. 24 MS. ROBESON HANNAN: Can you hear me now? 25 MR. BUTZ: Let me -- let me try to -- let me try</p>	<p>44</p> <p>1 So in effect, actually my traffic surges during 2 the day. And there -- and I can tell you emphatically 3 that there are absolutely times that in effect I've had 4 225 people showing up around 5:00 on a Friday, for sure. 5 Happens all the time. And I've never had a problem. 6 If you back to the event -- if you look at the 7 event, an event of 225 people is likely going to require a 8 bus. There's really only -- there are only two types of 9 events that -- that -- that are that nature. One is a 10 wedding, which I don't do, although, I don't want to be 11 prohibited from doing. And the other's a corporate event. 12 Those are the only two types of events that have that. 13 Weddings always involve a bus and corporate events are 14 usually always involving some kind of carpool situation 15 because they all have designated drivers because it's a 16 work event. So if it's 225 people, the number of cars 17 you're talking about is -- is nowhere near that. And on a 18 road the size of 28, it's just not a problem. 19 MR. HARRIS: Here -- here -- let me try this. I 20 -- I -- I do now see the -- the septic approval, the 21 number in there is 219 seats, okay? I don't see a problem 22 saying that the -- the Country Inn use will operate within 23 the approvals of the county septic system, either as it 24 now exists for the current system, or as it is permitted 25 to expand. But the bigger issue that I think really is</p>

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12 (45 to 48)

<p style="text-align: right;">45</p> <p>1 central to this we keep coming back to is traffic. And 2 you're right that there is no conditional use -- there's 3 no Country Inn traffic today, but there is winery traffic, 4 okay? And they are one and the same. And, so even better 5 than a case where a traffic engineer comes in ahead of a 6 use being installed and predicts what the traffic will be 7 from that, we have actual evidence that it is not a 8 traffic problem. And -- 9 MS. ROBESON HANNAN: Well, you don't because -- 10 MR. HARRIS: -- because the traffic will be no 11 -- what's that? 12 MS. ROBESON HANNAN: No, go ahead. Go ahead. 13 MR. HARRIS: No, so all -- all I'm saying is I 14 just think that it, for -- for you to make the finding 15 that it -- it, you know, that public facilities are 16 adequate. It -- it -- it's, you can say that, you know, 17 there will be no additional demand on public facilities. 18 MS. ROBESON HANNAN: It's not the public 19 facility. 20 MR. HARRIS: Zero. 21 MS. ROBESON HANNAN: It's not the public 22 facility. 23 MR. HARRIS: Okay. 24 MS. ROBESON HANNAN: It says, Will not cause 25 harm due to traffic, noise, odors, dust or lack of</p>	<p style="text-align: right;">47</p> <p>1 MR. BUTZ: Because it's already happening now 2 and it's not a problem. And I do not anticipate any more 3 traffic trips as part of my Country Inn. 4 MR. HARRIS: Ms. Robeson, it's kind of like 5 okay, if -- if -- if I wanted to open a daycare center in 6 my office building here in downtown Bethesda, okay? 7 Wisconsin Avenue has 20,000 cars a day traveling on it 8 today, okay? And, you know, if -- if I can say that the 9 daycare center is not going to add any traffic, it's not a 10 question of whether the 20,000 cars a day today -- a -- a 11 day are causing a problem. That's background. That 12 already exists. And that's what we have here. 100 13 percent of the traffic that would come from this use is 14 already there, so there is zero additional impact. 15 MS. ROBESON HANNAN: Okay. Although, we do many 16 times stagger daycare arrivals to deal with the traffic, 17 but what you're saying is it's -- but what you're saying 18 is that this is -- so you currently have capacity for 219? 19 The septic capacity? 20 MR. HARRIS: Yes. 21 MR. BUTZ: Correct. 22 MS. ROBESON HANNAN: Okay. So -- so you're 23 saying that during the peak period you currently have 225 24 people all showing up at once. 25 MR. BUTZ: Yeah.</p>
<p style="text-align: right;">46</p> <p>1 parking. That's what I'm looking for. Now, you've 2 addressed the parking. I think you've addressed the 3 parking. You've addressed the, you know -- I don't -- 4 usually we have a photometric plan in the record showing 5 the illumination levels at the property line, but how big 6 is this property? 7 MR. BUTZ: 60 acres. 8 MS. ROBESON HANNAN: So from -- yeah, so how 9 close -- let me do it this way. How close -- do you know 10 how close the -- the -- you know, the event location is 11 from the property line? 12 MR. BUTZ: Yeah, it's about a thousand feet. 13 MR. HARRIS: That's in inches. 50 feet and 500 14 -- yes, it's probably more than a thousand feet. 15 MR. BUTZ: Yeah, it is -- it is more than a 16 thousand feet. 17 MS. ROBESON HANNAN: Okay, so that's -- okay. 18 So now traffic and what I'm trying to get is if two -- if 19 I leave it unconditioned, 225 people or 219, whatever it 20 is, can all show up at 5:00. And it's difficult for me to 21 say that, you know, that's not going to cause a backup. 22 So what do you have -- 23 MR. BUTZ: Right, but I guess -- 24 MS. ROBESON HANNAN: Just -- just -- just let me 25 finish. What do you have to say to say that won't happen?</p>	<p style="text-align: right;">48</p> <p>1 MS. ROBESON HANNAN: And that's part of the 2 background. 3 MR. HARRIS: All at once? 4 MR. BUTZ: In close proximity. 5 MR. HARRIS: Okay. 6 MR. BUTZ: Exactly. And I gave my evidence of 7 the -- of the -- of the 6:00 p.m. on a Friday afternoon. 8 MS. ROBESON HANNAN: Right. And to your 9 knowledge, you have never observed -- are you there every 10 day? 11 MR. BUTZ: Most -- I am there every -- every 12 day's a bit of a stretch, but I'm there 80 percent of the 13 days. I -- I'm -- I work there a ton. I'm a -- I'm a 14 full-time -- full-time manager. 15 MS. ROBESON HANNAN: Let -- let me ask it a 16 different way. Have you been there during peak periods, 17 which are 4:00 to 7:00, or a peak hour, have you been 18 there -- 19 MR. BUTZ: Absolutely, it's -- 20 MS. ROBESON HANNAN: -- and observe 227 people 21 not causing a traffic jam? 22 MR. BUTZ: Yes. 23 MS. ROBESON HANNAN: Okay. 24 MR. HARRIS: That's an excellent way to look at 25 it. Thank you for clarifying that Ms. Robeson.</p>

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<p style="text-align: right;">49</p> <p>1 MR. BUTZ: Right. I -- I -- actually the --</p> <p>2 most of the times that I'm at the winery are during those</p> <p>3 peak times because that's when I could help out staff the</p> <p>4 most. They -- they don't need me at 2:00 on a Friday,</p> <p>5 right? They -- they need me Friday afternoon or Saturday</p> <p>6 or something like that when we're busy.</p> <p>7 MS. ROBESON HANNAN: Okay. Now that -- now that</p> <p>8 helps me. Sound, we're going to -- to do the limitation</p> <p>9 at the property line, right?</p> <p>10 MR. HARRIS: Yes.</p> <p>11 MR. BUTZ: Correct.</p> <p>12 MS. ROBESON HANNAN: I'm just trying to see if I</p> <p>13 have any other questions, so we don't have to delay this.</p> <p>14 Bear with me just one moment, so we don't have --</p> <p>15 MR. HARRIS: Sure.</p> <p>16 MS. ROBESON HANNAN: -- I just want to make sure</p> <p>17 we don't have to come back. This doesn't impact -- can</p> <p>18 you are -- am I -- can you see what I'm showing on my</p> <p>19 screen about farm alcohol production?</p> <p>20 MR. HARRIS: Yes.</p> <p>21 MS. ROBESON HANNAN: Do you see anything in here</p> <p>22 that you're not -- now you're changing -- you're changing</p> <p>23 your license, does that mean you don't qualify for the</p> <p>24 class four?</p> <p>25 MR. HARRIS: No -- no, we're keeping that class</p>	<p style="text-align: right;">51</p> <p>1 MS. ROBESON HANNAN: Okay. How about five? Do</p> <p>2 you still meet five?</p> <p>3 MR. BUTZ: Yes.</p> <p>4 MS. ROBESON HANNAN: Or have you already done</p> <p>5 that?</p> <p>6 MR. BUTZ: Well, I'd say it's an annual</p> <p>7 requirement.</p> <p>8 MS. ROBESON HANNAN: Okay, so you do that</p> <p>9 annually?</p> <p>10 MR. BUTZ: Yeah.</p> <p>11 MS. ROBESON HANNAN: Now here's your onsite</p> <p>12 tasting room, which you're -- you're -- well, does this</p> <p>13 change, see what I'm point -- I'm pointing to section</p> <p>14 seven. Does this change if with the -- with the class --</p> <p>15 the new license?</p> <p>16 MR. BUTZ: No.</p> <p>17 MS. ROBESON HANNAN: You're saying you're going</p> <p>18 to keep both licenses?</p> <p>19 MR. HARRIS: Right.</p> <p>20 MR. BUTZ: Yes.</p> <p>21 MS. ROBESON HANNAN: Okay. So you're not -- do</p> <p>22 you do -- are -- do you keep a written log of all events?</p> <p>23 MR. BUTZ: Yes.</p> <p>24 MS. ROBESON HANNAN: Do you want larger events</p> <p>25 or are you at your -- you're saying you're at your max?</p>
<p style="text-align: right;">50</p> <p>1 four license because that's necessary for the wine making</p> <p>2 and the selling of the wine. They would be seeking a</p> <p>3 second or additional license.</p> <p>4 MS. ROBESON HANNAN: Okay. So that -- that</p> <p>5 one's okay. You -- you'll still have, obviously -- well,</p> <p>6 let -- you can testify. Are the ingredients still going</p> <p>7 to be grown on site?</p> <p>8 MR. BUTZ: Yes.</p> <p>9 MS. ROBESON HANNAN: At least partially?</p> <p>10 MR. BUTZ: Yes, for sure.</p> <p>11 MS. ROBESON HANNAN: You still have five acres</p> <p>12 of fruit used in alcohol onsite?</p> <p>13 MR. BUTZ: Yeah, I believe the standard's</p> <p>14 actually 20 acres. And yes, we meet that standard.</p> <p>15 MS. ROBESON HANNAN: Do you source a majority of</p> <p>16 your grapes or other fruit from Maryland?</p> <p>17 MR. BUTZ: Yes.</p> <p>18 MS. ROBESON HANNAN: Will that continue to be</p> <p>19 the case?</p> <p>20 MR. BUTZ: Yes.</p> <p>21 MS. ROBESON HANNAN: Okay. I don't know what</p> <p>22 this one means. Are you still going to meet --</p> <p>23 MR. BUTZ: We're not approved --</p> <p>24 MS. ROBESON HANNAN: -- standard --</p> <p>25 MR. BUTZ: We're not approved.</p>	<p style="text-align: right;">52</p> <p>1 MR. BUTZ: The -- the 225 in that statute is</p> <p>2 fine with me.</p> <p>3 MS. ROBESON HANNAN: Okay. Okay. Illumination</p> <p>4 at the property line. Okay. And you have 225 about? You</p> <p>5 think you have 227 spaces or 225 spaces on site?</p> <p>6 MR. BUTZ: Yeah. I counted 274 spaces.</p> <p>7 MS. ROBESON HANNAN: Okay. Okay. We got this.</p> <p>8 Do you still meet any new building -- well, you're not at</p> <p>9 -- now, you're not adding a new building, right? It's</p> <p>10 just you're changing the license to permit you more</p> <p>11 flexibility to increase your menu and maybe have</p> <p>12 additional alcohol -- additional types of alcohol?</p> <p>13 MR. BUTZ: And -- and there -- and there are no</p> <p>14 dwelling units within the proximity anyway.</p> <p>15 MS. ROBESON HANNAN: Okay. You're not</p> <p>16 (inaudible) one?</p> <p>17 MR. HARRIS: No.</p> <p>18 MS. ROBESON HANNAN: Okay. All right. Do you</p> <p>19 mind -- I just don't want to release everybody yet, I want</p> <p>20 to go through these one more time so we don't have to come</p> <p>21 back.</p> <p>22 MR. HARRIS: Sure.</p> <p>23 MS. ROBESON HANNAN: Is there anything unusual</p> <p>24 about the characteristics of your winery versus other</p> <p>25 wineries that you know of? Or are you the only winery in</p>

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14 (53 to 56)

<p>53</p> <p>1 operation right now?</p> <p>2 MR. BUTZ: No, I feel our wine's better, but --</p> <p>3 but no. Rocklands -- Rocklands is maybe five miles away</p> <p>4 from us and Sugar Loaf Mountain Vineyard is maybe 15 miles</p> <p>5 away from us. So both -- both wineries located in Western</p> <p>6 Montgomery County and part of our proximity.</p> <p>7 MS. ROBESON HANNAN: And do they operate</p> <p>8 similarly to you?</p> <p>9 MR. BUTZ: They do.</p> <p>10 MS. ROBESON HANNAN: With the -- the large</p> <p>11 events and things like that?</p> <p>12 MR. BUTZ: In -- in compliance with this farm</p> <p>13 alcohol statute, yes. So I don't know if they're in</p> <p>14 compliance or not, but we have to meet the same -- we're</p> <p>15 currently occupy -- we're currently operating under the</p> <p>16 same standards. I -- I don't know if they comply or not.</p> <p>17 MS. ROBESON HANNAN: Okay. Okay. I think we've</p> <p>18 got enough in the record for me to make a decision. I do</p> <p>19 appreciate your taking the time to work through this. You</p> <p>20 do have the opportunity when you want to expand -- well, I</p> <p>21 can't give you advice as to what you may want to -- or</p> <p>22 suggest, but you can come in and amend your conditional</p> <p>23 use plan to include either just the wine tasting room or</p> <p>24 the whole thing, the commercial kitchen, everything. And</p> <p>25 -- and that would require -- and you can look up the</p>	<p>55</p> <p>1 MR. HARRIS: Okay.</p> <p>2 MS. ROBESON HANNAN: -- I think we're good to</p> <p>3 go. If -- if there is anything, the record stays open</p> <p>4 from 10 -- 10 calendar days, so until Halloween, which I'm</p> <p>5 sure will be a big event there.</p> <p>6 MR. HARRIS: All right. The second --</p> <p>7 MS. ROBESON HANNAN: But the record --</p> <p>8 MR. HARRIS: I'm sorry. Second question was</p> <p>9 going to be, you had brought up Mark Beal, Park and</p> <p>10 Planning staff, and I know you sent him an e-mail this</p> <p>11 morning. Do we need to reach out to him or will you reach</p> <p>12 out to him so that he doesn't have to --</p> <p>13 MS. ROBESON HANNAN: I'm going to reach out to</p> <p>14 him. I'm going to reach out to him and say, you know,</p> <p>15 this is the situation and you -- we're not going to send</p> <p>16 it back because it is what you reviewed.</p> <p>17 MR. HARRIS: Fine. Okay. That's excellent.</p> <p>18 MS. ROBESON HANNAN: Okay. So with that I'm</p> <p>19 going to adjourn the hearing, leave the record open for 10</p> <p>20 days to receive the transcript, which would be 10-31-22.</p> <p>21 I have 30 days to write my decision; although, we do try</p> <p>22 to get it out more quickly than that. We just can't</p> <p>23 always promise it. And once I issue the decision, you'll</p> <p>24 get a notification by e-mail, Mr. Harris will. And you</p> <p>25 have the right, if you disagree with my decision, you have</p>
<p>54</p> <p>1 definition of a major and a minor modification in 731-K,</p> <p>2 okay?</p> <p>3 So with that, I'm just -- the reason I asked you</p> <p>4 those questions too is the DPS, they have to enforce this</p> <p>5 and they like cut and dry, you know, it's helpful for them</p> <p>6 and doesn't get you in trouble. If there ever is a</p> <p>7 problem, it doesn't get you in trouble as to, you know,</p> <p>8 what was required and what was permitted. All right, so I</p> <p>9 do appreciate, you know, you're accepting my grilling, and</p> <p>10 hopefully, you know, we will all visit the winery at some</p> <p>11 point.</p> <p>12 MR. HARRIS: Indeed.</p> <p>13 MS. ROBESON HANNAN: Anything else -- anything</p> <p>14 else you'd like to say?</p> <p>15 MR. HARRIS: One comment and two brief</p> <p>16 questions. Number one, the comment: thank you for your</p> <p>17 patience with us as we worked through this. Two</p> <p>18 questions, one is: with our abbreviation of the request, I</p> <p>19 don't think there was any additional information we need</p> <p>20 to provide you or was there anything else that you need</p> <p>21 for the record?</p> <p>22 MS. ROBESON HANNAN: I don't think there is</p> <p>23 because it's clear, if you're not adding a new structure,</p> <p>24 this is what staff reviewed, and I don't have to send it</p> <p>25 back, so --</p>	<p>56</p> <p>1 the right to request oral argument before -- you have the</p> <p>2 right to appeal to the board of appeals within 10 days,</p> <p>3 okay?</p> <p>4 MR. HARRIS: Okay.</p> <p>5 MR. BUTZ: Okay.</p> <p>6 MS. ROBESON HANNAN: Okay. Go and relax now.</p> <p>7 MR. HARRIS: Thank you. Thank you.</p> <p>8 MR. BUTZ: Thank you very much. I appreciate</p> <p>9 everything.</p> <p>10 MR. HARRIS: Have a great weekend.</p> <p>11 MS. ROBESON HANNAN: Okay. Thank you.</p> <p>12 (Off the record at 10:59 AM.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

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CERTIFICATE OF COURT REPORTER

I, Caleb Welsh, the officer
before whom the foregoing proceedings were taken,
do hereby certify that said proceedings were
electronically recorded by me; and that I am
neither counsel for, related to, nor employed by
any of the parties to this case and have no
interest, financial or otherwise, in its outcome.



Caleb Welsh, Court Reporter

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CERTIFICATION OF TRANSCRIPT

I, Olivia I. Wilke, do hereby certify that the
foregoing transcript, to the best of my ability,
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and that I am neither counsel for, related to, nor
employed by any of the parties to this case and
have no interest, financial or otherwise, in its
outcome.



Olivia I. Wilke, CET
Planet Depos, LLC
November 1, 2022

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